

MAINE STATE LEGISLATURE

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STATE OF MAINE
126TH LEGISLATURE
FIRST REGULAR SESSION



Summaries of bills, amendments and laws enacted or finally passed

JOINT STANDING COMMITTEE ON JUDICIARY

July 2013

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STATE OF MAINE

126TH LEGISLATURE

FIRST REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contains summaries of all LDs and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 126th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

CARRIED OVER carried over to a subsequent session of the Legislature
CON RES XXX..... chapter # of constitutional resolution passed by both houses
CONF CMTE UNABLE TO AGREE.....Committee of Conference unable to agree; legislation died
DIED BETWEEN HOUSES.....House & Senate disagreed; legislation died
DIED IN CONCURRENCE.....defeated in each house, but on different motions; legislation died
DIED ON ADJOURNMENT..... action incomplete when session ended; legislation died
EMERGENCY..... enacted law takes effect sooner than 90 days after session adjournment
FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE emergency failed to receive required 2/3 vote
FAILED, ENACTMENT or FINAL PASSAGE..... failed to receive final majority vote
FAILED, MANDATE ENACTMENT legislation proposing local mandate failed required 2/3 vote
HELD BY GOVERNOR..... Governor has not signed; final disposition to be determined at subsequent session
LEAVE TO WITHDRAW..... sponsor's request to withdraw legislation granted
NOT PROPERLY BEFORE THE BODY ruled out of order by the presiding officer; legislation died
INDEF PP..... indefinitely postponed; legislation died
ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X... ought-not-to-pass report accepted; legislation died
P&S XXX..... chapter # of enacted private & special law
PUBLIC XXX.....chapter # of enacted public Law
RESOLVE XXX..... chapter # of finally passed resolve
VETO SUSTAINED..... Legislature failed to override Governor's veto

The effective date for non-emergency legislation enacted in the First Regular Session of the 126th Legislature is October 9, 2013. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

Joint Standing Committee on Judiciary

Committee Amendment "A" (H-447)

The bill provides for a cause of action for the wrongful death of an unborn viable fetus. It provides that, for the purposes of such an action, an unborn viable fetus is a fetus that has reached at least the 12th week of gestation. This amendment changes that threshold to at least the 24th week of gestation.

This amendment was not adopted.

LD 1194 An Act To Protect Social Media Privacy in School and the Workplace

CARRIED OVER

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MCCLELLAN		

This bill prohibits an employer or educational institution, whether public or private, from requiring or requesting an employee or a student, or a prospective employee or student, to disclose the username or account password for a personal social media account or e-mail account or to otherwise provide the employer or institution with access to those accounts.

This bill was carried over to any special or regular session of the 126th Legislature by joint order, H.P. 1145, as amended by H-B (H-580) and H-C (H-582).

LD 1200 An Act To Impose a Duty To Warn and Protect on Mental Health Professionals

**ACCEPTED
MAJORITY
(ONTP) REPORT**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
EVANGELOS PATRICK	ONTP OTP-AM	

This bill imposes on certain mental health professionals a duty to warn and protect if a patient or client is likely to engage in physical violence that poses a serious risk of harm to self or others or that constitutes a serious threat of substantial damage to real property. The duty to warn and protect applies to physicians, psychologists, alcohol and drug counselors, social workers and counseling professionals.

Committee Amendment "A" (H-207)

This amendment is the minority report of the committee and adds to the bill by imposing on osteopathic physicians a duty to warn and protect if a patient is likely to engage in physical violence that poses a serious risk of harm to self or others or that constitutes a serious threat of substantial damage to real property.

This amendment was not adopted.

LD 1204 An Act To Clarify the Appeal Process of Code Enforcement Officers and Boards of Appeal

PUBLIC 144

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
HOBBS	OTP-AM	H-173

Joint Standing Committee on Judiciary

This bill seeks to address the decision in *Eliot Shores, LLC v. Town of Eliot*, 2010 ME 129, 9 A.3d 806, by allowing the board of appeals for a municipality to review a decision of a code enforcement officer for that municipality and allowing review of a board of appeal's decision by the Superior Court unless the charter or an ordinance of the municipality expressly provides that the decision of the code enforcement officer or board of appeals is only advisory.

Committee Amendment "A" (H-173)

The bill strikes a provision in current law that a board of appeals may not assert jurisdiction over a matter unless the municipal charter or ordinance specifies the precise subject matter that may be appealed; the amendment retains that provision.

The bill allows a board of appeals to review a decision of a code enforcement officer unless the charter or an ordinance expressly provides that the decision is only advisory; the amendment provides that the charter or an ordinance may expressly provide that the decision may not be appealed.

The bill and amendment seek to address the decisions in *Eliot Shores, LLC v. Town of Eliot*, 2010 ME 129, 9 A.3d 806 and *Farrell v. City of Auburn*, 2010 ME 88, 3 A.3d 385.

Enacted Law Summary

Public Law 2013, chapter 144 provides that absent an express provision otherwise in a charter or ordinance, a decision of a code enforcement officer under a land use ordinance is reviewable on appeal by the board of appeals and in turn by the Superior Court. Chapter 144 seeks to address the decisions in *Eliot Shores, LLC v. Town of Eliot*, 2010 ME 129, 9 A.3d 806 and *Farrell v. City of Auburn*, 2010 ME 88, 3 A.3d 385.

LD 1216 An Act To Amend the Freedom of Access Act

PUBLIC 350

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
CAREY THOMAS	OTP-AM	H-389

This bill amends the Freedom of Access Act to require agencies and officials to respond within five calendar days to any communication about public records. The response must include a good faith, nonbinding estimate of the cost to provide the records. When estimating the cost, the agency or official must provide details of the costs, including the statutes governing the confidentiality of any information redacted from requested records.

This bill provides that failure to provide a written denial or refusal is considered a failure to allow inspection or copying and is subject to an appeal to Superior Court.

This bill gives the court discretion to award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff without making a finding of bad faith.

Committee Amendment "A" (H-389)

This amendment requires an agency or official to acknowledge a request to inspect or copy public records within 5 working days of receiving the request. Within a reasonable time of receiving the request, the agency or official must give a good faith, nonbinding estimate of the time to comply with the request and must also provide the cost estimate as required in current law.

This amendment deletes the proposed requirement that the agency or official responding to a request explain costs and the statutes requiring redaction. It also deletes the changes to attorney's fees.